

FILED FOR RECORD
AT REQUEST OF

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MAR 20 19 09 AM '91

OFFICIAL RECORDS
SANTA CLARA COUNTY
LAURIE KANE
RECORDER

COVENANT OF DEED RESTRICTION

Recording Requested By:

Howard K. Hatayama, Regional Administrator

When Recorded, Mail To:

Howard K. Hatayama, Regional Administrator
Department of Health Services
Toxic Substances Control Program

Region 2,

700 Heinz Avenue, Suite #300
Berkeley CA 94710

Attn: Site Mitigation Branch
Stonegate Project

APN # 088-34-004,007,008

REG FEE	22
RMF	20
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LMH	
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B	FEEN

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

Private Roadways Located in the Common Area
Stonegate Development
Milpitas, California

This Covenant and Agreement ("Covenant") is made on the
19 day of March, 1991 between the California
Department of Health Services ("the Department") and Alta Pacific
Housing Partners II ("Covenantor"), a California limited
partnership, which is the Owner of a certain portion of the
common area located within the Stonegate Development situated in
the City of Milpitas, County of Santa Clara, State of
California, as described in Exhibit A attached hereto and
incorporated herein by this reference, and as shown on Exhibit B
attached hereto and incorporated herein by this reference ("the
Property"), with reference to the following facts:

A. The Property contains hazardous substances.

1 B. Description of Facts.

2 B.1. Burial of Contaminated Soils. The Property is the
3 repository of approximately 13,000 cubic yards of soils
4 contaminated by residues of the following pesticides:
5 Dichloro-diphenyl-trichloro ethane (DDT), Dichloro-
6 diphenyl-dichloro ethylene (DDE), Dichloro-diphenyl-dichloro
7 ethane (DDD), Beta hexachlorocyclohexane (BHC), Delta
8 hexachlorocyclohexane (DHC), Gamma hexachlorocyclohexane
9 (Lindane), Dieldrin, Endosulphin II, Endrin, and Toxaphene. The
10 average pesticide concentration in the contaminated soils at the
11 Property is 15 parts per million. The contaminated soils at
12 the Property have been covered with the following (herein
13 collectively referred to as the "Cap"): one foot of clean soil
14 and four to seven feet of clean fill for the installation of
15 utilities (collectively the "Utility Layer"); eleven inches of
16 gravel road base (the "Road Base"); and three inches of asphalt
17 (the "Asphalt Covering").

18 B.2. Exposure Pathways. If the contaminated soils
19 should become uncovered, exposure to the contaminated soils may
20 occur via dermal contact, surface-water runoff, wind dispersal,
21 or migration to the groundwater resulting in dermal contact,
22 inhalation, or ingestion by humans. The potential human health
23 effects resulting from exposure to pesticides include: potential
24 tumor formation from possible carcinogens; liver and kidney
25 damage, fetotoxicity, and Central Nervous System (CNS) effects.
26 The risk of public exposure to the contaminants has been
27 minimized by placing an impermeable cap over the buried soils to

1 eliminate any significant risks to human health or the
2 environment.

3 B.3. Adjacent Land Uses and Population Potentially
4 Affected. Stonegate Development is a residential community
5 which if developed will consist of eighty-nine single family
6 residences, a park, common areas and private roadways.
7 Stonegate is located in a mixed residential-commercial area
8 adjoining Dempsey Road and one block distant from the I-680
9 freeway in Milpitas, California.

10 C. Covenantor desires and intends that in order to
11 protect the present or future public health and safety, the
12 Property shall be used in such a manner as to avoid potential
13 harm to persons or property which may result from hazardous
14 substances which have been deposited within the Property.

16 ARTICLE I

17 GENERAL PROVISIONS

18 1.01 Provisions to Run with the Land. This Covenant
19 sets forth protective provisions, covenants, conditions and
20 restrictions (collectively referred to as "Restrictions"), upon
21 and subject to which the Property and every portion thereof
22 shall be improved, held, used, occupied, leased, sold,
23 hypothecated, encumbered, and/or conveyed. Each and all of the
24 Restrictions shall run with the land, and pass with each and
25 every portion of the Property, and shall apply to, inure to the
26 benefit of and bind the respective successors in interest
27 thereof, provided that this Covenant does not encumber any

1 adjacent property. Each and all of the Restrictions are imposed
2 upon the Property. Each and all of the Restrictions are imposed
3 pursuant to Health and Safety Code Section 25355.5 and run with
4 the land pursuant to Health and Safety Code Section 25355.5.
5 Each and all of the Restrictions are for the benefit of and
6 enforceable by the Department.

7 1.02 Concurrence of Owners Presumed. All purchasers,
8 lessees, or possessors of any portion of the Property shall be
9 deemed by their purchase, leasing, or possession of such
10 Property, to be in accord with the foregoing and to agree for
11 and among themselves, their heirs, successors, and assignees,
12 and the agents, employees, and lessees of such owners, heirs,
13 successors, and assignees, that the Restrictions as herein
14 established must be adhered to for the benefit of future Owners,
15 and Occupants of the Property; and that their interest in the
16 Property shall be subject to the Restrictions contained herein.

17 1.03 Incorporation into Deeds and Leases. Covenantor
18 desires and covenants that the Restrictions set out herein shall
19 be incorporated in and attached to each and all deeds,
20 easements, licenses, and leases of any portion of the Property.
21

22 ARTICLE II

23 DEFINITIONS

24 2.01 Department. "Department" shall mean the California
25 Department of Health Services and shall include its successor
26 agencies, if any.
27

20140573

1 2.02 Improvements. "Improvements" shall mean all
2 buildings, roads, driveways, regradings, and paved parking
3 areas, constructed or placed upon any portion of the Property.

4 2.03 Occupants. "Occupants" shall mean Owners and those
5 persons entitled by ownership, leasehold, or other legal
6 relationship to the exclusive right to occupy any portion of the
7 Property.

8 2.04 Owner or Owners. "Owner" or "Owners" shall mean
9 the Covenantor and/or its successors in interest, including
10 heirs, and assigns, who hold title to all or any portion of the
11 Property.

12
13 ARTICLE III

14 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

15 3.01 Restrictions on Development and Use. Covenantor
16 promises to restrict the use of the Property as follows:

17 a. The entire area of the Property shall be covered
18 with the Cap to prevent offsite migration of contaminants and
19 prevent exposure to onsite residents or onsite workers;

20 b. No grading or excavation of the Property that would
21 permanently expose contaminated soils shall be permitted;
22 provided however, that the foregoing shall not prohibit grading
23 or excavation of the Cap in a manner which does not disturb any
24 contaminated soil buried in the property;

25 c. The Property shall be posted with a sign in English
26 and Spanish stating that no grading, excavation, or building
27 activities which would require excavation of the Property below

1 the Utility Layer are allowed without written permission of the
2 Owner;

3 d. Any contaminated soils brought to the surface by
4 grading, excavation, trenching, or backfilling shall be managed
5 in accordance with all applicable provisions of state and
6 federal law;

7 e. The Owner shall notify the Department of each of
8 the following: 1) The type, cause, location and date of any
9 disturbance to the Cap which, unless immediately repaired, will
10 materially affect the ability of the Cap to contain subsurface
11 hazardous substances beneath the roadways of the Property; and
12 2) the type and date of repair of such disturbance.
13 Notification to the Department shall be made by registered mail
14 at least five (5) working days prior to any planned repair of
15 the Cap. Notification to the Department shall be made by
16 registered mail within five (5) working days of the discovery of
17 Cap disturbance and the completion of repairs; and

18 f. The Department shall have access to the Property
19 for the purposes of inspection, surveillance, or monitoring, as
20 provided for in Chapters 6.5 and 6.8 of Division 20 of the
21 Health and Safety Code.

22 3.02 Conveyance of Property. The Owner or Owners shall
23 provide a thirty (30) day advance notice to the Department of
24 any sale, lease, or other conveyance of the Property or an
25 interest in the Property to a third person. The Department
26 shall not, by reason of the Covenant, have authority to approve,
27 disapprove, or otherwise affect any sale, lease, or other

1 conveyance of the Property except as otherwise provided by law
2 or by reason of this Covenant.

3 3.03 Enforcement. Failure of the Owner or Owners to
4 comply with any of the restrictions set forth in Paragraph 3.01
5 shall be grounds for the Department to require that the Owner or
6 Owners modify or remove any Improvements constructed in
7 violation of that paragraph. Violation of the Covenant shall be
8 grounds for the Department to file civil and criminal actions
9 against the Owner or Owners as provided by law.

10 3.04 Notice in Agreements. All Owners and Occupants
11 shall execute a written instrument which shall accompany all
12 purchase, lease, sublease, or rental agreements relating to the
13 Property. The instrument shall contain the following statement:

14 "The land described herein contains hazardous substances.
15 Such condition renders the land and the Owner, lessees, or
16 other possessors of the land subject to requirements,
17 restrictions, provisions and liabilities contained in
18 Chapter 6.5 and Chapter 6.8 of Division 20 of the Health
19 and Safety Code. This statement is not a declaration that
20 a hazard exists."

21 3.05 Notice in Owners Association Covenants, Conditions
22 and Restrictions. The following statement shall be included in
23 the Covenants, Conditions and Restrictions of the Stonegate
24 Milpitas Owners' Association, or its successors, if any. This
25 statement may not be removed or amended from the Stonegate
26 Milpitas Owners' Association Covenants, Conditions and
27 Restrictions without written approval of the Department.

1 "Soil Conditions. Certain soil in the development
2 contained low concentrations of agricultural chemical residues.
3 This soil has been placed in a trench beneath the private
4 streets in the Common Area (the Roadways) as a part of a soil
5 remediation plan approved by the California Department of Health
6 Services (DHS). A copy of the plans describing the location,
7 depth and other related information on the buried soils is on
8 file with the building department of the City of Milpitas.

9 There shall be no excavating, grading, drilling, or taking
10 of other actions that may in any manner disturb the soil located
11 seven feet beneath the Roadways without the prior written
12 consent of the Association and the Declarant. Prior to granting
13 any such consent, the Association shall notify and consult with
14 the Declarant and a soils engineer experienced in the handling
15 and treatment of residual agricultural chemicals in soils for
16 the purpose of (1) establishing of procedures to ensure that any
17 action that disturbs the soils is in complete compliance with
18 all appropriate federal, state, and local laws; and (2)
19 monitoring the action to ensure compliance with the procedures.
20 In addition, the Association may impose such other restrictions
21 or conditions that the Association considers necessary or
22 advisable under the circumstances.

23 If the Association authorizes the disturbance of the soil
24 without prior notification and consultation, as required herein,
25 the Association shall defend, indemnify and hold Declarant and
26 its successor and assigns harmless from any claims, demands,
27 liabilities, causes of action, judgments, and expenses

1 (including attorneys' fees) arising from such action.

2 The Association shall maintain the sign installed by
3 Declarant at the entrance into the development that prohibits
4 any disturbance of the soils within the Roadways without the
5 consent of the Association."

6 ARTICLE IV

7 VARIANCE AND TERMINATION

8 4.01 Variance. Any Owner of the Property or any portion
9 thereof may apply to the Department for a written variance from
10 the provisions of this Covenant. Such application shall be made
11 in accordance with Health and Safety Code Section 25233.

12 4.02 Termination. Any Owner of the Property or a
13 portion thereof may apply to the Department for a termination of
14 the Restrictions as they apply to all or any portion of the
15 Property. Such application shall be made in accordance with
16 Health and Safety Code Section 25234.

17 4.03 Term. Unless terminated in accordance with
18 paragraph 4.02 above, by law or otherwise, this Covenant shall
19 continue in effect in perpetuity.

20 ARTICLE V

21 MISCELLANEOUS

22 5.01 No Dedication Intended. Nothing set forth herein
23 shall be construed to be a gift or dedication, or offer of a
24 gift or dedication, of the Property or any portion thereof to
25 the general public or for any purposes whatsoever.
26
27

1 5.02 Notices. Whenever any person gives or serves any
2 notice, demand, or other communication with respect to this
3 Covenant, each such notice, demand, or other communication shall
4 be in writing and shall be deemed effective 1) when delivered,
5 if personally delivered to the person being served or to an
6 officer of a corporate party being served or official of a
7 government agency being served, or 2) three (3) business days
8 after deposit in the mail if mailed by United States mail,
9 postage paid, certified, return receipt requested:

10 If to "Covenantor": Alta Pacific Housing Partners II
11 40 California Avenue, Suite H
Pleasanton, CA 94566

12 If to "Department": Department of Health Services
13 Toxic Substances Control Program
Site Mitigation Branch
14 700 Heinz Avenue, Suite 200
Berkeley, CA 94710
15 Attention: Stonegate Development
Project

16 If to "Owner": Stonegate Milpitas
17 Owners' Association
Stonegate Development
18 Dempsey Road
Milpitas, CA 95035

19
20 Covenantor, the Department, and each Owner may change their
21 addresses for notices by recording a modification to this
22 Covenant for such purpose and delivering notice thereof and a
23 copy of such recorded modification to the Covenantor, the
24 Department and each Owner in the manner provided in this
25 paragraph.

26 5.03 Partial Invalidity. If any portion of the terms or
27 Restrictions set forth herein is determined to be invalid for

1 any reason, the remaining portion shall remain in full force and
2 effect as if such portion had not been included herein.

3 5.04 Article Headings. Headings at the beginning of
4 each numbered article of this Covenant are solely for the
5 convenience of the parties and are not a part of the Covenant.

6 5.05 Recordation. This instrument shall be executed by
7 the Covenantor and by the Regional Administrator of the Region
8 2, Toxic Substances Control Program of the California Department
9 of Health Services. This instrument shall be recorded by the
10 Covenantor in the County of Santa Clara within ten (10) days of
11 the date of execution.

12 5.06 References. All references to Code sections
13 include successor provisions.

14 IN WITNESS WHEREOF, the undersigned have executed this Covenant
15 on the 19th day of March, 1991.

16
17 COVENANTOR: ALTA PACIFIC HOUSING PARTNERS II,
18 A California limited partnership

19 BY: ALTAMONT ENTERPRISES, LTD.
20 a California Corporation
21 Its General Partner

22 BY: R.S. Williams
23 R.S. WILLIAMS, President

24 BY: K/W REALTY GROUP LIMITED
25 PARTNERSHIP
26 a Delaware limited partnership
27 Its General Partner

BY: KLINGBELL DEVELOPMENT COMPANY
LIMITED PARTNERSHIP
TK ~~DELAWARE~~ a ~~DELAWARE~~ limited partnership
Its General Partner

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BY: KLINGBELL DEVELOPMENT
CORPORATION
a Delaware corporation
Its General Partner

BY: TOM KAMBE

Name: TOM KAMBE

Title: VICE PRESIDENT

DEPARTMENT: STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

By:

Howard K. Hatayama

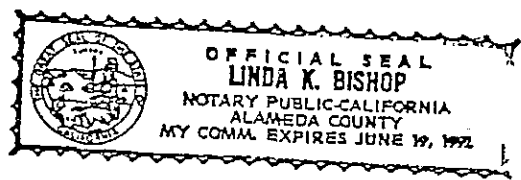
Title:

HOWARD K. HATAYAMA
Regional Administrator, Region 2
Toxic Substances Control Program

1 STATE OF CALIFORNIA)
2 COUNTY OF Alameda)
3

4 On March 19, 1991 before me, the undersigned, a
5 Notary Public in and for said state, personally appeared _____
6 Tom Kambe, personally known to me or proved to me on the
7 basis of satisfactory evidence to be the person who executed the
8 within instrument as Vice President of Klingbell
9 Development Corporation, a Delaware corporation, who
10 acknowledged to me that he/she executed the within instrument on
11 behalf of Klingbell Development Corporation, a Delaware
12 Corporation, which executed the within instrument on behalf of
13 Klingbell Development Company Limited Partnership, a Delaware
14 limited partnership, which executed the within instrument on
15 behalf of K/W Realty Group Limited Partnership, a Delaware
16 limited partnership, which executed the within instrument on
17 behalf of Alta Pacific Housing Partners II, a California limited
18 partnership, and that all the foregoing entities executed the
19 within instrument.

20
21 WITNESS my hand and official seal.

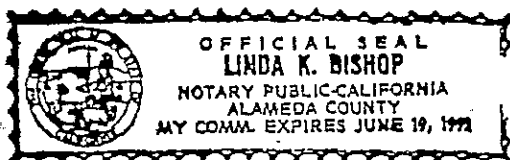


Linda K. Bishop
Notary Public in and for said
County and State

1 STATE OF CALIFORNIA)
2 COUNTY OF ALAMEDA)

3
4 On 3-19-91, 1991 before me, the undersigned, a
5 Notary Public in and for said state, personally appeared
6 Howard K. Hatayama, personally known to me or proved to me on
7 the basis of satisfactory evidence to be the person who executed
8 the within instrument as Regional Administrator of the Region 2,
9 Toxic Substances Control Program of the Department of Health
10 Services, the Agency that executed the within instrument, and
11 acknowledged to me that such agency executed the same.

12
13 WITNESS my hand and official seal.

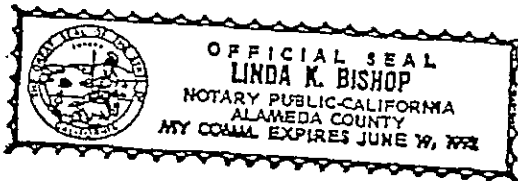


Linda K. Bishop
Notary Public in and for said
County and State

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA)

On March 19, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared R. S. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as President of Altamont Enterprises, Ltd., a California corporation, said corporation being known to me to be the general partner of Alta Pacific Housing Partners II, a California limited partnership, the limited partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.



Linda K. Bishop
Notary Public in and for said
County and State

Exhibit A

LEGAL DESCRIPTION
AREAS OF PESTICIDE-LADEN SOIL
CONTAINMENT

All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Being a portion of David Lane and Cuciz Lane as shown upon that certain Tract No. 8344 filed in Book 617 of Maps at Pages 16 through 18, Records of Santa Clara County, being more particularly described as follows:

PARCEL ONE:

Beginning at the intersection of the southerly right-of-way line of David Lane with the common boundary line between Lot and Lot 58, as shown upon said map;

Thence, from said POINT OF BEGINNING, N 3° 31' 20" W, 40.00 feet, to a point in the northerly right-of-way line of said David Lane;

Thence, along said northerly line easterly on the arc of a curve to the right, concave to the south, said curve having a radius of 140.00 feet, through a central angle of 9° 29' 55", for an arc length of 23.21 feet;

Thence, continuing along said northerly line, S 84° 01' 25" E, 70.07 feet;

Thence, continuing along said northerly line, easterly on the arc of a curve to the left, concave to the north, said curve

1 having a radius of 65.00 feet, through a central angle of $23^{\circ} 08'$
2 $28''$, for an arc length of 26.25 feet;

3 Thence, leaving said northerly right-of-way line of David
4 Lane, S $17^{\circ} 09' 53''$ E, 30.00 feet to a point in the southerly
5 right-of-way line of said David Lane;

6 Thence, continuing along said southerly line, westerly on
7 the arc of a curve to the right, concave to the north, said curve
8 having a radius of 95.00 feet, through a central angle of $16^{\circ} 10'$
9 $56''$, for an arc length of 26.83 feet;

10 Thence, continuing along said southerly line, S $89^{\circ} 01' 03''$
11 W, 94.39 feet;

12 Thence, continuing along said southerly line, westerly on
13 the arc of a curve to the left, concave to the south, said curve
14 having a radius of 100.00 feet, through a central angle of $2^{\circ} 32'$
15 $23''$, for an arc length of 4.43 feet to the POINT OF BEGINNING.
16

17 TOGETHER WITH all that portion of said David Lane, being
18 more particularly described as follows:

19 Being a strip of land of uniform width of 30.00 feet,
20 measured at right angles, lying 15.00 feet on each side of the
21 following described centerline;

22 Beginning at the most northerly terminus of that certain
23 course on the centerline of David Lane as delineated as "N 17°
24 $09' 53''$ W, 107.00" as shown upon said map;

25 Thence, from said POINT OF BEGINNING, along said centerline
26 of David Lane, northwesterly on the arc of a curve to the left,
27 concave to the southwest, said curve having a radius of 40.00

1 feet, through a central angle of $90^{\circ} 00' 00''$, for an arc length
2 of 62.83 feet;

3 Thence, continuing along said centerline, $S 72^{\circ} 50' 07'' W$,
4 389.50 feet;

5 Thence, continuing along said centerline, southwesterly on
6 the arc of a curve to the left, concave to the southeast, said
7 curve having a radius of 215.00 feet, through a central angle of
8 $15^{\circ} 29' 39''$, for an arc length of 58.14 feet to a point of
9 reverse curvature;

10 Thence, continuing along said centerline, southwesterly on
11 the arc of a curve to the right, concave to the northwest, said
12 curve having a radius of 215.00 feet, through a central angle of
13 $15^{\circ} 29' 39''$, for an arc length of 58.14 feet;

14 Thence, continuing along said centerline, $S 72^{\circ} 50' 07'' W$,
15 274.21 feet to the terminus of said centerline.

16
17 PARCEL TWO:

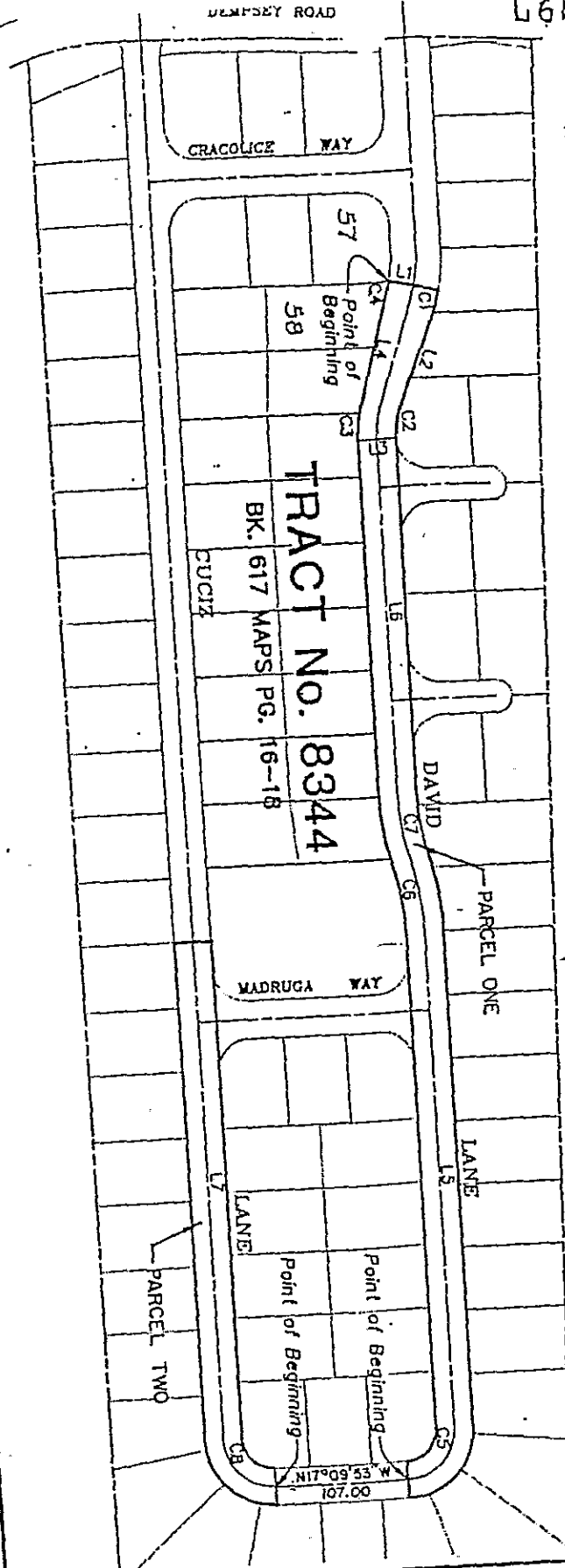
18 Being a strip of land of uniform width of 30.00 feet,
19 measured at right angles, lying 15.00 feet on each side of the
20 following described centerline;

21 Beginning at the most southerly terminus of that certain
22 course on the centerline of David Lane, delineated as " $N 17^{\circ} 09'$
23 $53'' W$, 107.00" as shown upon said map;

24 Thence, from said POINT OF BEGINNING, along said centerline
25 of David Lane and Cuciz Lane southwesterly on the arc of a curve
26 to the right, concave to the northwest, said curve having a
27

1 radius of 40.00 feet, through a central angle of $90^{\circ} 00' 00''$, for
2 an arc length of 62.83 feet;

3 Thence, continuing along said centerline, S $72^{\circ} 50' 07''$ W,
4 393.03 feet to the terminus of said centerline.
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LINE	DIRECTION	DISTANCE
L1	N 03°31'20" W	40.00'
L2	S 84°01'25" E	70.07'
L3	S 17°09'53" E	30.00'
L4	S 89°01'03" W	94.39'
L5	S 72°50'07" W	389.50'
L6	S 72°50'07" W	274.21'
L7	S 72°50'07" W	393.03'

CURVE	RADIUS	LENGTH	DELTA
C1	140.00'	23.21'	09°29'55"
C2	65.00'	26.25'	23°08'28"
C3	95.00'	26.83'	16°10'56"
C4	100.00'	4.43'	02°32'23"
C5	40.00'	62.83'	90°00'00"
C6	215.00'	58.14'	15°29'39"
C7	215.00'	58.14'	15°29'39"
C8	40.00'	62.83'	90°00'00"

Date: Sept., 1990
 Scale: 1" = 100'
 Drawn: D.W.
 Check: S.P.
 Prof. Eng.: D.W.



HMH, INCORPORATED
 Civil Engineers, Planners, Surveyors
 1303 OAKLAND ROAD, P.O. BOX 811510
 SAN JOSE, CALIFORNIA 95181-1510
 (408) 284-3132 FAX (408) 284-3612
 Submitted by:

PLAT TO ACCOMPANY
 LEGAL DESCRIPTION
 for
 PESTICIDE-LOADED SOIL "UNWE
 101"